IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 197 OF 2003

State of Goa
through Shri Nelson Fernandes,
Food Inspector,
Directorate of Food & Drugs
Administration, Government
of Goa, Campal, Panaji-Goa. ... Applicant.

versus

Shri Bala Ram Chowdari
(Temporary resident of)
C/o Yeshwant Borkar,
Mahavir Mix Ice Cream,
H. No. 548, Near Vishant
Theatre, Aquem, Margao-Goa.
Original resident of
H.No.315, Baluram Path,
P.O. Shivarti Via Gangapur,
via Billwada, Rajasthan. ... Respondent.

Mr. S. N. Sardessai, Public Prosecutor for the Applicant.

Respondent in person.

CORAM: P. V. HARDAS, J.

DATED: 3RD OCTOBER, 2003.

ORAL ORDER

The State being aggrieved by the acquittal of

the Respondent/Accused for an offence punishable under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954, passed by the Chief Judicial Magistrate, Margao, by Judgment dated 22nd October, 2002, in Criminal Case No.1/F/99/A, has filed the present application seeking leave to file appeal against acquittal. Records and Proceedings have been called for from the learned Trial Court.

2. The Respondent is a hawker who himself manufactures the ice cream. On 23rd September, 1998, at about 10.30 a.m., the Food Inspector, P.W.1, Nelson Fernandes, along with panch witness P.W.2, Vishwas Bhonsle, visited the premises of M/s. Mahavir Mix Ice cream situated near Vishant Theatre, Aquem, Margao. He found that the Accused was manufacturing ice cream cone by himself and was selling the same by storing in a container. The sample of the ice cream cone was taken in a clean steel container and was divided into three equal parts of 300 grams each. Each part was then filled in a clean dry and empty bottle by adding 24 drops of formaline as a preservative. The bottles were corked and shaken properly with each bottle being labelled with a common code and a serial number. Thereafter, each bottle was wrapped in a thick brown paper with a label being pasted on each of the samples. Each bottle was thereafter tied with a strong thread and

was sealed at the knot of the thread. One sealed sample of ice cream cone was sent to the public analyst in a sealed cover and the remaining two samples of ice cream cones were sent to the Local Health Authority, Salcete Taluka as per the provisions of Food Adulteration Act and Rules framed thereunder. The public analyst, P.W.3, Maria Lucia Caldeira, by a report at Exh.37 opined that the sample of the ice cream analysed does not conform to the prescribed standards under the Prevention of Food Adulteration Rules as it was deficient in milk fat and protein and contained starch more than the permissible limit. Accordingly, P.W.1, Nelson Fernandes, Food Inspector, filed his complaint at Exh.1 in the Court of the Judicial Magistrate, Margao. The prosecution examined three witnesses in support of its case.

3. The learned Trial Court found that there was a complete breach of Section 13(2) of the Prevention of Food Adulteration Act, 1954. According to P.W.1, Nelson Fernandes, he had sent a letter dated 11th February, 1999, Exh.PW1/F colly by registered A.D. However, during his evidence, P.W.1, Nelson Fernandes, was unable to produce acknowledgement card. P.W.1, Nelson Fernandes, had stated that he had misplaced the said acknowledgement card on 19th October, 2000. He was also not in possession of any certificate issued by the

postal authority to demonstrate that the notice was served on the Accused. The learned Trial Court in para 13 of its Judgment has referred to the fact that permission was granted to the prosecution to produce the certificate from the postal authority regarding receipt of letter/notice by the Accused, but the prosecution failed to produce any documentary evidence that the Complainant, P.W.1, Nelson Fernandes, had complied with the provisions of Section 13(2) of the Prevention of Food Adulteration Act, 1954.

4. The learned Trial Court also found that P.W.1, Nelson Fernandes, had not produced any receipt regarding the payment made for the sample purchased by him. This was essential to substantiate the case of the prosecution that the Accused had kept the ice cream cone for sale. According to P.W.1, Nelson Fernandes, he had offered money to the Accused but the Accused declined to accept it. However, no contemporaneous documents have been drawn evidencing the refusal on the part of the Accused. The learned Trial Court also found that the evidence of P.W.1, Nelson Fernandes, regarding the drawing of the sample of the ice cream from the handcart was itself doubtful. P.W.1, Nelson Fernandes, had stated that he had remained in the premises of the house of the Accused on 23rd September, 1998 from 10.30 a.m. to 11.45 a.m. and during this period, the ice cream was

divided into three parts and a panchanama was drawn. P.W.1, Nelson Fernandes, thereafter changed the statement by stating that the sample of the ice cream was drawn from the handcart of the Accused which was on the road and that he never entered the premises of the Accused. He thereafter changed his version by stating that he had visited the house of the Accused but did not find any ice cream inside the premises and the ice cream was kept on the handcart which was outside his house. The evidence of P.W.2, Vishwas Bhonsle, did not corroborate the prevaricating stand of P.W.1, Nelson Fernandes. According to P.W.2, Vishwas Bhonsle, the Accused was preparing ice cream on the handcart and he had not entered the premises of the Accused nor had the Complainant entered inside the room. In view of this evidence, the learned Trial Court gave the benefit of doubt to the Accused and acquitted him.

5. With the assistence of Mr. S. N. Sardessai, learned Public Prosecutor, I have perused the record and the Judgment of the learned Trial Court. The learned Trial Court has appreciated its evidence and recorded its findings. The view taken by the learned Trial Court is a possible view on the basis of the record and no perversity in the reasoning has been pointed out to me. According to me, therefore, this is not a fit case warranting any interference in an appeal against

acquittal and accordingly, Criminal Miscellaneous Application No. 197 of 2003 is dismissed. Leave refused.

P. V. HARDAS, J.

RD.